United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: September 26, 2000

TO : Robert H. Miller, Regional Director

Region 20

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Theatrical Wardrobe Employees Union 596-0800

Local 784, IATSE 596-0811

(Shorentstein, Hays/Nederlander) 596-0844-1700

Case 20-CB-9962 596-3237-

6700

This case was submitted for advice as to whether complaint may issue on alleged violations that occurred after the filing of a charge but are not the subject of a new or amended charge filed within six months after their occurrence. The Region learned of these alleged violations through its investigation of the outstanding charge, and has concluded they are "closely related" to that charge, filed about five years ago.

This memorandum confirms a telephone conference on September 22, 2000, between Regional Attorney Joseph Norelli, Supervisory Attorney Marjorie Watson and Attorney Kayce Compton.

We informed the Region that it may issue complaint attacking alleged unfair labor practices which did not form the basis of a new or amended charge, but which are "related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board."1

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NLRB v. Fant Milling Co., 360 U.S. 301, 306-307 (1959) (quoting National Licorice Co. v. NLRB, 309 U.S. 350 (1940), where the Court found that the violations alleged in the complaint were of the "same class" of violations as those set forth in the charge, and were continuations of them in pursuance of the same objects). See also SEIU Local 9 (American Maintenance), 303 NLRB 735, 743-44 (1991), enf'd as modified, 996 F.2d 1226 (9th Cir. 1993) in which the Board, citing the reasoning of Fant Milling,

Thus, as the Supreme Court stated in $\underline{\text{NLRB v. Fant Milling}}$ Company: 2

Once its jurisdiction is invoked the Board must be left free to make full inquiry under its broad investigatory power in order properly to discharge the duty of protecting public rights which Congress has imposed upon it. There can be no justification for confining such an inquiry to the precise particularizations of a charge.

Fant Milling has been applied to permit the addition to a complaint of allegations based on events occurring after a charge is filed if "the allegations are related to the conduct alleged in the timely charge and developed from that conduct while the charge was pending before the Board." See American Electric Power, 302 NLRB 1021 fn.1 (1991), enf'd, 976 F.2d 725 (4th Cir. 1992).

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found that a complaint could properly allege a violation of Section 8(b)(2) even though that section was not alleged in the underlying charge, since the 8(b)(2) allegation was "closely related" to the 8(b)(1)(A) violation alleged in the underlying charge.

 $^{^{2}}$ 360 U.S. at 308 (footnote omitted).